

Rel: December 2, 2022

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

---

SC-2022-0700

---

**Matthew C. Drinkard and Jefferson Blane Dolbare**

v.

**Jacquelyn Turner Perry, Debra Sue Turner, Mildred  
Williamson, Edna Fant, Sermenedia White, and Amanda Louise  
Turner**

**Appeal from Choctaw Circuit Court  
(CV-19-900010)**

---

SC-2022-0701

---

**Matthew C. Drinkard and Jefferson Blane Dolbare**

v.

**Jacquelyn Turner Perry, Debra Sue Turner, Mildred  
Williamson, Edna Fant, Sermenedia White, and Amanda Louise  
Turner**

**Appeal from Choctaw Circuit Court  
(CV-20-000011)**

BOLIN, Justice.

Matthew C. Drinkard and Jefferson Blane Dolbare filed a motion to intervene in the proceedings regarding the administration of the estate of Milton Turner, deceased, which were pending in the Choctaw Circuit Court ("the circuit court") after having been removed from the Choctaw Probate Court ("the probate court"). The circuit court denied the motion to intervene, and Drinkard and Dolbare appealed.

Facts and Procedural History

Milton Turner died on July 25, 2018. On September 20, 2018, Mildred Williamson filed a petition for letters of administration of Turner's estate in the probate court; that case was assigned probate-court case number A-2018-5218. In her petition, Williamson asserted that Turner had died intestate and that Williamson was Turner's only

surviving heir. Also on September 20, 2018, the probate court entered an order granting Williamson letters of administration of Turner's estate. The probate court entered a separate order naming Williamson as the personal representative of Turner's estate.

On January 25, 2019, Williamson, individually and in her capacity as the personal representative of Turner's estate, entered into a contract agreeing to sell to Drinkard and Dolbare ("the purchasers") real property belonging to the estate for \$880,650. Part of the real estate to be conveyed included "[t]he East half of the Southeast Quarter ... in Section 33, Township 9 North, Range 4 West, Choctaw, Alabama." The real-estate sales contract specified that the closing of the sale was to occur on or before May 31, 2019. On February 7, 2019, Williamson, individually and in her capacity as personal representative of Turner's estate, executed a deed conveying other real property that was part of Turner's estate to Marcus Hester.

On February 13, 2019, Callway Sargent, alleging to be an heir of Turner's, filed a claim of heirship in Turner's estate. Sargent also filed a motion for injunctive relief in which he acknowledged the February 7, 2019, deed, asserted that Williamson had agreed to sell and had conveyed

real property belonging to Turner's estate without the approval of the probate court, and requested that the probate court enjoin "Williamson from engaging in any further administration of [Turner's] estate until so ordered by [the probate court]."

On February 14, 2019, Williamson filed in the circuit court a petition pursuant to § 12-11-41, Ala. Code 1975, requesting that the circuit court enter an order removing the administration of Turner's estate from the probate court to the circuit court. On February 19, 2019, the circuit court granted Williamson's petition and entered an order removing the administration of Turner's estate from the probate court to the circuit court; the removed case was assigned circuit-court case number CV-19-900010.

From February 28, 2019, to March 18, 2019, the following individuals, all claiming to be heirs of Turner's, filed individual claims against Turner's estate: Horace Turner, Jr., John Edward Daniels, Amos Hill, Jr., Kantoria Hill, Sermenedia White, Amanda Louise Turner ("Amanda"), Juanita Marie Kirksey, Brandon Pearson, Vera D. Warren, Phillip Kirksey, Jr., Thurman Pearson, Jermaine McGrew, Angela McGrew, Mallie McGrew, Jr., Edna Fant, Jacquelyn Turner Perry, Debra

Sue Turner ("Debra Sue"), and Robert Lee Daniels. The claims filed by White and Amanda requested "that a judicial determination be made as to the heirs-at-law of Milton Turner, deceased, and to declare and determine questions regarding the intestate succession, administration and distribution of the intestate estate."

On March 1, 2019, Williamson filed a motion pursuant to § 43-2-844, Ala. Code 1975, requesting that the circuit court approve the sale of real property belonging to Turner's estate. As amended on March 20, 2019, Williamson's motion requested that the circuit court (1) approve the sale memorialized in the January 25, 2019, real-estate sales contract between Williamson and the purchasers and (2) "approve, ratify and confirm" the February 7, 2019, deed conveying real property belonging to Turner's estate to Hester. Williamson further acknowledged that Fant, Perry, and Debra Sue are "heirs and beneficiaries of the estate." On April 9, 2019, the circuit court entered two separate orders granting Williamson's motion.

On May 8, 2019, Fant, Perry, and Debra Sue filed a motion to alter, amend, or vacate the circuit court's April 9, 2019, orders or, in the alternative, to certify its April 9, 2019, orders as final pursuant to Rule

54(b), Ala. R. Civ. P. On May 22, 2019, following a hearing, the circuit court denied Fant, Perry, and Debra Sue's motion to alter, amend, or vacate but certified its April 9, 2019, orders as final judgments pursuant to Rule 54(b). No party appealed from the circuit court's April 9, 2019, orders.

Williamson and the purchasers did not close on the sale of the property that was the subject of the January 25, 2019, real-estate sales contract by May 31, 2019, as required by the contract. Accordingly, on July 29, 2019, the purchasers filed a breach-of-contract action against Williamson, individually and in her capacity as personal representative of Turner's estate, alleging that Williamson had breached the January 25, 2019, real-estate sales contract by failing to close on the sale on or before May 31, 2019. The purchasers requested specific performance of the real-estate sales contract or compensatory damages.

On June 9, 2020, White and Amanda filed a motion to alter, amend, or vacate the circuit court's April 9, 2019, order approving the sale of real property belonging to the estate memorialized in the January 25, 2019, real-estate sales contract or, in the alternative, to "stay" the order. In support of their motion, White and Amanda asserted that, on June 2,

2020, they had received "a copy of the 1988 last will and testament of Milton Turner" and that the will purported to devise to Turner's brother, Millage Turner ("Millage"), a portion of the real property that was to be sold to the purchasers pursuant to the January 25, 2019, real-estate sales contract that had been approved by the circuit court's April 9, 2019 order. White and Amanda further asserted that Millage had died intestate before Turner died and that they are the great-granddaughters of Millage. In fact, Turner's alleged 1988 will specifically devised to Millage approximately 40 acres of land described as "the Southeast one-quarter of the Southeast one-quarter ... in Section 33, Township 9 North, Range 4 West" ("the contested property"); the contested property comprises a portion of the property to be sold pursuant to the January 25, 2019, real-estate sales contract, which was described, in part, as "[t]he East half of the Southeast Quarter ... in Section 33, Township 9 North, Range 4 West, Choctaw, Alabama." White and Amanda argued that, because Turner's alleged will purported to devise to Millage the contested property, which comprises a portion of the property to be sold to the purchasers, the April 9, 2019, order approving the sale had to be revised to exclude mention of

the contested property. On July 8, 2020, before their June 9, 2020, motion had been ruled upon, White and Amanda withdrew the motion.

On June 23, 2020, following a trial that had occurred on May 29, 2020, the circuit court entered an order determining that Sargent, Horace Turner, Jr., John Edward Daniels, Amos Hill, Jr., Kantoria Hill, Juanita Marie Kirksey, Brandon Pearson, Vera D. Warren, Phillip Kirksey, Jr., Thurman Pearson, Jermaine McGrew, Angela McGrew, Mallie McGrew, Jr., and Robert Lee Daniels had "failed to produce clear and convincing evidence that they are the descendants/heirs of Milton Turner, deceased, for the purposes of intestate succession." Accordingly, the circuit court denied the above-mentioned parties' claims of heirship in Turner's estate. In that same order, the circuit court also stated that Williamson had "confessed" that White and Amanda are Turner's heirs.

On November 13, 2020, White and Amanda filed in the probate court a "petition for probate of lost last will and testament" of Turner; that case was assigned probate-court case number A-2020-05422. In their petition, White and Amanda recognized that the administration of Turner's estate had previously been removed from the probate court and was pending in the circuit court. White and Amanda offered a copy of the



alleged will of Turner, noting that "the original last will and testament of Milton Turner is lost and has not been located."

On December 9, 2020, the probate court entered an order in probate-court case number A-2020-05422 stating that the will of Turner "be received, and the same is hereby declared to be duly proven as the last will and testament of the said Milton Turner, and as such admitted to probate." The probate court further purported to appoint Williamson, again, as the personal representative of Turner's estate in this second estate proceeding. On the same day, White and Amanda filed in the circuit court a petition pursuant to § 12-11-41 requesting that the circuit court enter an order removing probate-court case number A-2020-05422 from the probate court to the circuit court.

On December 14, 2020, the purchasers filed in case number CV-19-900010, the original proceeding regarding the administration of Turner's estate pending in the circuit court, a motion to intervene pursuant to Rule 24, Ala. R. Civ. P. In their motion to intervene, the purchasers claimed an interest in the contested property.

On December 18, 2020, the circuit court purported to grant White and Amanda's petition to remove probate-court case number A-2020-

05422 from the probate court to the circuit court; that case was assigned circuit-court case number CV-20-000011.

On January 13, 2021, the purchasers, even though their motion to intervene had not yet been ruled upon, filed a motion requesting that the circuit court vacate its December 18, 2020, order purporting to remove probate-court case number A-2020-05422 from the probate court to the circuit court. The purchasers argued that, because the administration of Turner's estate had already been removed from the probate court pursuant to the circuit court's initial removal order dated February 19, 2019, the circuit court thereafter had exclusive jurisdiction of the administration of Turner's estate and the probate court had no jurisdiction over any aspect of the administration of Turner's estate. Accordingly, the purchasers argued, the probate court had lacked jurisdiction to probate Turner's alleged will, to declare that will to be valid, or to again appoint Williamson as the personal representative of Turner's estate; the purchasers argued that, therefore, the probate court's December 9, 2020, order entered in probate-court case number A-2020-05422 was void for lack of jurisdiction. Further, the purchasers argued that, because the probate court had lacked jurisdiction to consider

White and Amanda's November 13, 2020, petition, which purportedly initiated probate-court case number A-2020-05422, the circuit court's removal of probate-court case number A-2020-05422 was void because that case essentially does not exist. Also on January 13, 2021, the purchasers filed a motion to dismiss circuit-court case number CV-20-000011 (which is the purportedly removed probate-court case number A-2020-05422) based on the same jurisdictional argument explained above.

On January 19, 2021, White and Amanda filed a motion requesting that the circuit court vacate its April 9, 2019, orders, in which the circuit court had approved the sale or conveyance of real property belonging to Turner's estate. Fant, Perry, and Debra Sue filed motions joining White and Amanda's motion requesting that the circuit court vacate its April 9, 2019, orders. On February 4, 2021, the purchasers filed a response to White and Amanda's motion.

On February 25, 2021, White and Amanda filed a response in opposition to the purchasers' motion to intervene. White and Amanda argued that the purchasers "wholly lack[ed] standing" to intervene because (1) the purchasers are, undisputedly, not heirs of Turner or beneficiaries under Turner's alleged will, (2) any interest in the real

property belonging to Turner's estate that the purchasers may have had under the January 25, 2019, real estate-sales contract terminated when the contract expired on May 31, 2019, and (3) the January 25, 2019, real-estate sales contract was void or voidable for a lack of a meeting of the minds because, White and Amanda argued, Turner had, before the execution of that contract, devised the contested property to Millage. Further, White and Amanda argued that Williamson, as the personal representative of Turner's estate, had no interest in the contested property to convey because ownership of the contested property had already vested in White and Amanda, as Millage's heirs, under Turner's alleged will. The purchasers filed a reply.

Also on February 25, 2021, White and Amanda filed a response in opposition to the purchasers' January 13, 2021, motion requesting that the circuit court vacate its December 18, 2020, order purporting to remove probate-court case number A-2020-05422 from the probate court to the circuit court. White and Amanda disagreed with the purchasers' argument that the probate court had lacked jurisdiction over White and Amanda's November 13, 2020, "petition for probate of lost last will and testament" of Turner. White and Amanda asserted that, even though the

administration of Turner's estate had already been removed from the probate court to the circuit court by the circuit court's February 19, 2019, order, § 43-8-162, Ala. Code 1975, required that Turner's alleged will be filed in the probate court before the circuit court could consider it. This is so, White and Amanda argued, because a circuit court cannot consider an issue that has not been removed from a probate court. White and Amanda argued that the original proceeding that had been removed from the probate court by the circuit court (probate-court case number A-2018-5218) was a proceeding regarding the administration of Turner's intestate estate, which did not include a will contest, and that the second proceeding that had been initiated in the probate court by White and Amanda (probate-court case number A-2020-05422) concerned the alleged 1988 lost will of Turner, which did involve a will contest. White and Amanda argued that it was necessary to initiate the second proceeding in the probate court, and then remove that proceeding to the circuit court, in order for the circuit court to be able to consider the will contest.

On May 12, 2021, the circuit court entered an order consolidating circuit-court case number CV-19-900010, the first removed probate case

SC-2022-0700; SC-2022-0701

(probate-court case number A-2018-5218), and circuit-court case number CV-20-000011, the second purportedly removed probate case (probate-court case number A-2020-05422).

On December 7, 2021, after conducting a hearing, the circuit court entered an order denying the purchasers' motion to intervene. The circuit court determined that the purchasers' only interest relating to the administration of Turner's estate is based on the January 25, 2019, real-estate sales contract and that the contract "was premature and unenforceable because the land sought to be sold includes a 40 acre parcel devised by the last will and testament of Milton Turner to heirs, ... White and Amanda." Accordingly, the circuit court essentially determined that the purchasers had no interest relating to the administration of Turner's estate.

On January 5, 2022, the purchasers filed a motion to alter, amend, or vacate the circuit court's order denying their motion to intervene. On January 12, 2022, White and Amanda filed a response to the purchasers' motion to alter, amend, or vacate the circuit court's December 7, 2021, order. On January 17, 2022, Williamson, in her capacity as the personal representative of Turner's estate, also filed a response to the purchasers'

motion to alter, amend, or vacate. On February 24, 2022, the purchasers filed a motion requesting a hearing on their motion to alter, amend, or vacate. The circuit court did not rule upon the purchasers' motion to alter, amend, or vacate, and the purchasers assert that their motion was denied by operation of law pursuant to Rule 59.1, Ala. R. Civ. P., on April 5, 2022, without a hearing on the motion having been conducted. The purchasers appealed on May 13, 2022.<sup>1</sup>

#### Standard of Review

"[A]n order denying intervention as of right is appealable." Thrasher v. Bartlett, 424 So. 2d 605, 607 (Ala. 1982). "The standard of review applicable in cases involving a denial of a motion to intervene as of right is whether the trial court has acted outside its discretion. See City of Dora v. Beavers, 692 So. 2d 808, 810 (Ala. 1997)." Black Warrior

---

<sup>1</sup>The purchasers identified Perry, Debra Sue, Fant, White, and Amanda, all of whom claim to be Turner's heirs, as appellees. They also identified Williamson as an appellee, but they did not indicate in what capacity they were naming Williamson -- i.e., as the personal representative of Turner's estate, as an individual claiming to be Turner's heir, or both; Williamson has not filed a brief with this Court in any capacity.

Riverkeeper, Inc. v. East Walker Cnty. Sewer Auth., 979 So. 2d 69, 72 (Ala. Civ. App. 2007).<sup>2</sup>

### Discussion

Initially, we will consider the purchasers' argument that the probate court did not have jurisdiction over probate-court case number A-2020-05422, which was purportedly initiated by White and Amanda's "petition for probate of lost last will and testament" of Turner filed in the probate court on November 13, 2020. We note that "[m]atters of subject-matter jurisdiction are subject to de novo review." DuBose v. Weaver, 68 So. 3d 814, 821 (Ala. 2011). This jurisdictional question is significant for our purposes on appeal because the circuit court purported to remove probate-court case number A-2020-05422 from the probate court in its December 18, 2020, order, purportedly initiating circuit-court case number CV-20-000011, which serves as the basis of one of the appeals currently before this Court, appeal number SC-2022-0701. Accordingly,

---

<sup>2</sup>In their motion to intervene filed in the circuit court, the purchasers asserted arguments under Rule 24(a) and (b), Ala. R. Civ. P. However, the purchasers assert an argument under only Rule 24(a), permitting intervention as of right, on appeal; they have abandoned any argument under Rule 24(b).



if the probate court did not have jurisdiction over probate-court case number A-2020-05422, then the circuit court did not have jurisdiction to remove that case from the probate court, which removal purportedly created circuit-court case number CV-20-000011, and, in turn, this Court does not have jurisdiction over appeal number SC-2022-0701, which is an appeal from circuit court case number CV-20-000011, and the appeal must be dismissed for lack of jurisdiction.

As set forth extensively above, on September 20, 2018, Williamson filed a petition for letters of administration of Turner's estate in the probate court, and that case was assigned probate-court case number A-2018-5218. The probate court entered orders granting Williamson letters of administration of Turner's estate and naming Williamson as the personal representative of Turner's estate. On February 19, 2019, in response to a petition filed by Williamson, the circuit court entered an order removing the administration of Turner's estate from the probate court to the circuit court pursuant to § 12-11-41, and the case was assigned circuit-court case number CV-19-900010.

After the administration of Turner's estate had been removed from the probate court pursuant to § 12-11-41, on November 13, 2020, White

and Amanda filed in the probate court a "petition for probate of lost last will and testament" of Turner, which was assigned probate-court case number A-2020-05422. On December 9, 2020, the probate court entered an order purporting to admit to probate Turner's alleged 1988 lost will and purporting to again appoint Williamson as the personal representative of Turner's estate. White and Amanda then filed in the circuit court a petition requesting that the circuit court enter an order removing probate-court case number A-2020-05422 from the probate court to the circuit court. On December 18, 2020, the circuit court entered an order purporting to remove probate-court case number A-2020-05422 from the probate court to the circuit court, which purportedly created circuit-court case number CV-20-000011, from which appeal number SC-2022-0701 arises.

Before this Court, the purchasers argue that the probate court never obtained jurisdiction over probate-court case number A-2020-05422. The purchasers argue that the circuit court, in the already-removed circuit-court case number CV-19-900010, would be the only court to possess jurisdiction over White and Amanda's petition to probate Turner's alleged will. The purchasers' argument is based on this Court's

decision in Allen v. Estate of Juddine, 60 So. 3d 852 (Ala. 2010), a case involving very similar facts to the present case.

In Allen, a decedent's heir filed a petition with the Etowah Probate Court alleging that the decedent had died intestate; the Etowah Probate Court issued letters of administration to the petitioning decedent's heir. Shortly thereafter, the decedent's common-law wife filed a petition in the Etowah Circuit Court requesting that administration of the decedent's estate be removed to that court under § 12-11-41. The decedent's common-law wife asserted that the decedent had executed a will before his death and attached to her petition a copy of the decedent's alleged will. The Etowah Circuit Court entered an order granting the decedent's common-law wife's petition and removed the administration of the decedent's estate to the Etowah Circuit Court pursuant to § 12-11-41. Once the administration of the estate was removed to the Etowah Circuit Court, the decedent's common-law wife filed a petition requesting that the Etowah Circuit Court probate the decedent's alleged will. The decedent's heir filed a response in opposition, arguing that the Etowah Circuit Court did not have jurisdiction to probate the decedent's alleged will. The Etowah Circuit Court ultimately concluded that it did not have

jurisdiction to probate the decedent's alleged will and ordered the decedent's common-law wife to file in the Etowah Probate Court a petition to probate the alleged will. The decedent's common-law wife appealed to this Court.

On appeal, the sole issue before this Court was whether the Etowah Circuit Court had jurisdiction to probate the decedent's alleged will. The decedent's common-law wife argued that the Etowah Circuit Court "had exclusive jurisdiction of the administration of the estate. As a result, [the decedent's common-law wife] argue[d], the circuit court erred in declining to probate the will and in ordering her to submit the will to the probate court." Allen, 60 So. 3d at 854. In considering this issue, this Court set forth the following well-established principles of law:

"Probate courts have original and general jurisdiction over the probate of wills and over the '[t]he granting of letters testamentary and of administration.' See § 12-13-1, Ala. Code 1975. However, the administration of an estate may be removed from a probate court to a circuit court under the procedures stated in § 12-11-41, Ala. Code 1975. That section provides:

"The administration of any estate may be removed from the probate court to the circuit court at any time before a final settlement thereof, by any heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed of any such estate, without assigning any

special equity; and an order of removal must be made by the court, upon the filing of a sworn petition by any such heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed of any such estate, reciting that the petitioner is such heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed and that, in the opinion of the petitioner, such estate can be better administered in the circuit court than in the probate court.'

"Article VI, § 144, Ala. Const. 1901, describes the power of a circuit court upon such a removal, stating, in part: '[W]henever the circuit court has taken jurisdiction of the settlement of any estate, it shall have power to do all things necessary for the settlement of such estate, including the appointment and removal of administrators, executors, guardians, and trustees and including action upon the resignation of either of them.' This Court has explained: 'Once the administration and settlement of an estate are removed from the probate court, the probate court loses jurisdiction over the estate, and the circuit court obtains and maintains jurisdiction until the final settlement of the estate.' Oliver v. Johnson, 583 So. 2d 1331, 1332 (Ala. 1991).

"This Court has recognized the authority of a circuit court to retransfer the administration of an estate to the probate court where the removal was improper, such as where the petitioner lacked standing or where the probate court had already entered a final settlement of the estate. See Ex parte Terry, 985 So. 2d 400 (Ala. 2007); Ex parte McLendon, 824 So. 2d 700 (Ala. 2001). However, this Court has consistently held that, once a circuit court has properly taken jurisdiction of the administration of an estate under § 12-11-41, its jurisdiction over the estate is exclusive. Specifically, this Court has stated:

"In Hinson v. Naugher, 207 Ala. 592, 93 So. 560 (1922), the Court stated that when the administration of an estate is removed from the probate court to an equity court, the jurisdiction of the equity court is exclusive and the equity court must enter the final settlement. See, also, Cater v. Howard, 230 Ala. 133, 159 So. 830 (1935) (when the administration of an estate is duly removed from the probate court into a court of equity, the jurisdiction of the equity court is complete to accomplish the ultimate purpose of the administration); Johnson v. Johnson, 252 Ala. 366, 41 So. 2d 287 (1949) (when the administration of an estate is removed from the probate court to an equity court, the entire administration goes into equity for the completion of administration); and Opinion of the Clerk No. 32, 390 So. 2d 1040 (Ala. 1980) (clerk expressed opinion that when the administration of an estate is removed from the probate court to the circuit court, the jurisdiction of the circuit court encompasses the power to make all orders necessary to the administration of the estate).

"The administration of [the subject] estate was properly removed from the probate court to the circuit court; the circuit court, therefore, has the exclusive jurisdiction to enter a final settlement of the estate."

"Ex parte Nelson, 644 So. 2d 1266, 1267 (Ala. 1994) (emphasis added)."

Allen, 60 So. 3d at 854-55. This Court concluded that "the administration of [the decedent's] estate was properly removed from the probate court to the circuit court under § 12-11-41. Accordingly, the circuit court had

exclusive jurisdiction of the administration of the estate." 60 So. 3d at 855.

This Court also noted that, in removing the administration of the decedent's estate from the Etowah Probate Court, the Etowah Circuit Court had stated

"that its administration of the estate and the probate of the will were 'two totally different matters,' noting the exclusive authority of the probate court to initiate the administration of an estate, citing Ex parte Smith, 619 So. 2d 1374, 1376 (Ala. 1993) ('The circuit court cannot initiate the administration of an estate, because the initiation of administration is a matter exclusively in the jurisdiction of the probate court.')

60 So. 3d at 855. In addressing that statement of the Etowah Circuit Court, this Court stated:

"'[T]he administration and settlement of a decedent's estate in equity is a single and continuous proceeding; and when the administration of an estate is once removed from the probate court into a court of equity, its jurisdiction becomes exclusive and efficient, and the court must operate to a final settlement governed by its own procedure.'

"Hinson v. Naugher, 207 Ala. 592, 593, 93 So. 560, 561 (1922) (emphasis added). See also Ex parte Farley, 981 So. 2d 392, 396 (Ala. 2007) ('[T]he administration and settlement of a decedent's estate is a single and continuous proceeding throughout, and there can be no splitting up of such administration, any more than any other cause of action ....' (quoting McKeithen v. Rich, 204 Ala. 588, 589, 86 So. 377, 378

(1920)(emphasis added)). Additionally, in his special concurrence, Justice Bolin aptly observes the relevance of authority recognizing the in rem status of proceedings to probate a will or to set aside the probate of a will."

60 So. 3d at 855. The relevant portion of the special writing in Allen stated:

"At the time of removal [of an intestate estate from the probate court to the circuit court pursuant to § 12-11-41, Ala. Code 1975], the estate res is carried with the estate to the circuit court, which then takes sole jurisdiction of the in rem proceeding. The main opinion correctly cites Oliver v. Johnson, 583 So. 2d 1331, 1332 (Ala. 1991), for the proposition that after removal 'the probate court loses jurisdiction over the estate, and the circuit court obtains and maintains jurisdiction until the final settlement of the estate.' (Emphasis added.)

"In McCann v. Ellis, 172 Ala. 60, 55 So. 303 (1911), the Court held that proceedings to probate or to set aside the probate of wills are proceedings in rem, and not in personam. This Court stated:

"It has been uniformly ruled by all English and American cases which we have examined that proceedings to probate or to set aside the probate of wills are proceedings in rem and not in personam; that such proceedings are exclusively to determine the status of the res, and not the rights of the parties. Judgments or decrees as to the status of the res, in proceedings strictly in rem, are conclusive against all the world as to that status; while such judgments as to the rights of parties, whatever may be the point adjudicated, not being as to the status, are only conclusive between the parties or privies to the suit.'



"McCann, 172 Ala. at 69, 55 So. at 305. See also Tipton v. Tipton, 257 Ala. 32, 34, 57 So. 2d 94, 96 (1952) ('The probate of a will is a proceeding in rem, fixes the status of the res, binding all the world until revoked or vacated in a direct proceeding to that end. '); Caverno v. Webb, 239 Ala. 671, 674, 196 So. 723, 724 (1940) ('True, also, the probate of a will is a proceeding in rem, fixes the status of the res, binding on all the world until revoked or vacated in a direct proceeding to that end. '); Ex parte Walter, 202 Ala. 281, 283, 80 So. 119, 121 (1918) ('"The probate of a will is a judgment in rem. ... Its validity and effect can be contested and vacated only by a seasonable appeal, or by a bill filed under the statute."' (quoting Kaplan v. Coleman, 180 Ala. 267, 274, 60 So. 885, 887 (1912))).

"As stated above, once the administration of the estate was removed from the probate court to the circuit court, the estate res and the in rem jurisdiction of it were also removed. Thereafter, the circuit court had the 'power to do all things necessary for the settlement of such estate, including the appointment and removal of administrators, executors, guardians, and trustees and including action upon the resignation of either of them.' Article VI, § 144, Ala. Const. 1901 (emphasis added). The United States Supreme Court succinctly summed up the obvious jurisdictional principle involved in this case in Marshall v. Marshall, 547 U.S. 293, 311, 126 S. Ct. 1735, 164 L. Ed. 2d 480 (2006), when the Court, addressing the probate exception to federal jurisdiction, stated: 'When one court is exercising in rem jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res.' Accordingly, the subsequent attempt to probate the alleged lost will in this proceeding must proceed in the circuit court, the only court having in rem subject-matter jurisdiction of the estate after it was removed from the probate court until a final settlement of the estate is had."

60 So. 3d at 856-57 (Bolin, J., concurring specially). Ultimately, this Court concluded that the Etowah Circuit Court had "erred in refusing to probate [the decedent's] will," stating that the "administration of the estate was properly removed to the circuit court," that the "administration of the estate was a single and continuous proceeding over which the circuit court had exclusive jurisdiction, and [that] the probate of [the decedent's] will could not be split from the action." 60 So. 3d at 856.

In the present case, as in Allen, the administration of Turner's estate was initiated in the probate court when the probate court issued letters of administration to Williamson on September 20, 2018. The administration of the estate (probate-court case number A-2018-5218) was properly removed from the probate court to the circuit court (circuit court case number CV-19-900010) on February 19, 2019. Based on the principles set forth in Allen, the administration of Turner's estate was a single and continuous proceeding over which the circuit court had exclusive jurisdiction in circuit-court case number CV-19-900010, and the probate of Turner's alleged will could not be split from that proceeding. See Hinson v. Naugher, 207 Ala. 592, 593, 93 So. 560, 561 (1922) ("[T]he

administration and settlement of a decedent's estate in equity is a single and continuous proceeding; and when the administration of an estate is once removed from the probate court into a court of equity, its jurisdiction becomes exclusive and efficient, and the court must operate to a final settlement governed by its own procedure." (emphasis added)); see also Ex parte Farley, 981 So. 2d 392, 396 (Ala. 2007) ("[T]he administration and settlement of a decedent's estate is a single and continuous proceeding throughout, and there can be no splitting up of such administration, any more than any other cause of action ...." (quoting McKeithen v. Rich, 204 Ala. 588, 589, 86 So. 377, 378 (1920)(emphasis added))).<sup>3</sup> Therefore, the probate court did not have jurisdiction over

---

<sup>3</sup>In their briefs before this Court, some of the appellees argue that Allen is distinguishable from the present case. They assert that, in Allen, before the decedent's intestate estate was removed to the Etowah Circuit Court, the Etowah Circuit Court had been notified of the fact that the decedent's common-law wife believed that the decedent had executed a will. They argue that,

"[t]hus, the [Etowah] Circuit Court ..., unlike under the present facts, ... had been instructed by an interested party while still in [the Etowah] Probate Court to decide the lost will validity issue, such that when the matter was removed from the [Etowah] Probate Court to [the Etowah] Circuit Court, only the circuit court had jurisdiction to determine that disputed issue expressly transferred to it, because both the

White and Amanda's petition to probate Turner's alleged will (probate-court case number A-2020-05422) and its December 9, 2020, order purporting to admit Turner's alleged will to probate was a nullity. Further, because the probate court had no jurisdiction over White and Amanda's petition to probate Turner's alleged will, the circuit court's December 18, 2020, order purporting to remove probate-court case number A-2020-05422 and to create circuit-court case number CV-20-000011 was also a nullity; there was nothing to remove from the probate court, because the probate court did not have jurisdiction over White and Amanda's petition (White and Amanda should have filed their petition to

---

intestate and the will/validity/probate administrations had been expressly transferred to the [Etowah] Circuit Court."

White and Amanda's brief, p. 35; Perry and Debra Sue's brief, p. 36; and Fant's brief, p. 32.

This argument is not convincing. First, the appellees have cited no authority to support their argument, and, for that reason alone, we need not consider it. White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008). Second, as set forth extensively above, the "administration and settlement of a decedent's estate in equity is a single and continuous proceeding." Hinson, 207 Ala. at 593, 93 So. at 561. Contrary to their assertion, there is not a distinction between the administration of "the intestate and the will/validity/probate administrations." Their argument does not convince us that Allen is distinguishable from the present case.

SC-2022-0700; SC-2022-0701

probate Turner's alleged will in the circuit court in circuit-court case number CV-19-900010). Accordingly, any judgments entered in circuit-court case number CV-20-000011 are void and will not support an appeal. As a result, we dismiss appeal number SC-2022-0701.

Next, we turn to the purchasers' argument in appeal number SC-2022-0700 that the circuit court erred in denying their Rule 24(a) motion to intervene as of right in the proceedings regarding the administration of Turner's estate. As noted above, the circuit court denied the purchasers' motion to intervene on the basis that the January 25, 2019, real-estate sales contract "was premature and unenforceable because the land sought to be sold includes a 40 acre parcel devised by the last will and testament of Milton Turner to heirs, ... White and Amanda." The circuit court appears to have based its denial of the purchasers' motion to intervene on the operation of Turner's alleged will purporting to devise the contested property. We have determined, however, that the probate court did not have jurisdiction to consider White and Amanda's petition to probate Turner's alleged will and that the probate court's December 9, 2020, order in probate-court case number A-2020-05422 purporting to admit Turner's alleged will to probate was a nullity. As a result, because

there has not been a proper petition filed requesting that the circuit court, the only court having sole and proper in rem jurisdiction of Turner's estate, admit Turner's alleged will to probate, that unprobated alleged will cannot serve as the basis of the circuit court's order denying the purchasers' motion to intervene.

Even though the stated basis for the circuit court's order denying the purchasers' motion to intervene is invalid, "this Court will affirm a judgment for any reason supported by the record that satisfies the requirements of due process." Smith v. Mark Dodge, Inc., 934 So. 2d 375, 380 (Ala. 2006) (citing Taylor v. Stevenson, 820 So. 2d 810, 814 (Ala. 2001)). Therefore, we will consider whether the circuit court's order denying the purchasers' motion to intervene is due to be affirmed based on an alternative basis supported by the record. Mainly, we will consider whether the purchasers satisfied the requirements of Rule 24(a).

In their brief before this Court, the purchasers state that they "filed their motion to intervene under the provisions of Rule 24(a)[, Ala. R. App. P.]" The purchasers' brief, p. 22. Specifically, they argue that they have the right to intervene in the proceedings regarding the administration of Turner's estate pursuant to Rule 24(a)(2), which provides:

"Upon timely application, anyone shall be permitted to intervene in an action: ... when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

In interpreting Rule 24(a)(2), this Court has stated that,

"[i]n its exercise of discretion, the trial court must determine whether the potential intervenor has demonstrated: (1) that its motion is timely; (2) that it has a sufficient interest relating to the property or transaction; (3) that its ability to protect its interest may, as a practical matter, be impaired or impeded; and (4) that its interest is not adequately represented. Rule 24(a)(2), Ala. R. Civ. P."

City of Dora v. Beavers, 692 So. 2d 808, 810 (Ala. 1997). As noted above, we will not reverse a trial court's decision denying a motion to intervene as of right unless we determine that the trial court "has acted outside its discretion." Black Warrior, 979 So. 2d at 72 (citing City of Dora, 692 So. 2d at 810).

The parties dispute whether the purchasers have a sufficient interest relating to the administration of Turner's estate to intervene. The purchasers argue that they have a sufficient interest relating to the administration of Turner's estate based on their alleged interest in the contested property, which interest, the purchasers assert, was granted to

them in the January 25, 2019, real-estate sales contract. The purchasers further argue that White and Amanda "made a claim" to the contested property by seeking to probate Turner's alleged will, which purported to devise the contested property, in the probate court. The purchasers argue that White and Amanda's petition to probate Turner's alleged will "was simply an act to circumvent [the purchasers] from purchasing the property" and "triggered the right of [the purchasers] to intervene" in the proceedings regarding the administration of Turner's estate. The purchasers' brief, p. 27.

Before this Court, the purchasers take the position that their right to intervene in the proceedings regarding the administration of Turner's estate is premised on White and Amanda's petition to probate Turner's alleged will. This is so, the purchasers argue, because, by filing the petition to probate Turner's alleged will, White and Amanda essentially made a claim to the contested property that the purchasers had agreed to purchase by executing the January 25, 2019, real-estate sales contract. The purchasers argue that they are asserting a claim to the contested property pursuant to the January 25, 2019, real-estate sales contract and that White and Amanda are asserting a claim to the same property



pursuant to Turner's alleged will. However, neither of those assertions are supported by the record.

First, we consider the purchasers' alleged interest in the contested property. Initially, we note that the purchasers have cited no authority in support of their argument claiming an interest relating to the administration of Turner's estate sufficient to support their request to intervene. Specifically, the purchasers have not cited any authority indicating that a real-estate sales contract conveys to the potential purchaser an interest in the property that is the subject of the sales contract, let alone an interest sufficient to justify the potential purchaser's intervention in proceedings regarding the administration of a decedent's estate when the estate is the potential seller. Accordingly, we need not consider this particular argument asserted by the purchasers. See White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008)("Rule 28(a)(10)[, Ala. R. App. P.,] requires that arguments in briefs contain discussions of facts and relevant legal authorities that support the party's position. If they do not, the arguments are waived. Moore v. Prudential Residential Servs. Ltd. P'ship, 849 So. 2d 914, 923 (Ala. 2002); Arrington v. Mathis, 929 So. 2d

468, 470 n. 2 (Ala. Civ. App. 2005); Hamm v. State, 913 So. 2d 460, 486 (Ala. Crim. App. 2002). 'This is so, because "'it is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument.'" Jimmy Day Plumbing & Heating, Inc. v. Smith, 964 So. 2d 1, 9 (Ala. 2007) (quoting Butler v. Town of Argo, 871 So. 2d 1, 20 (Ala. 2003), quoting in turn Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994))."

Nevertheless, even if we were to consider the purchasers' argument, the January 25, 2019, real-estate sales contract does not grant the purchasers a sufficient interest to intervene in the proceedings regarding the administration of Turner's estate. The January 25, 2019, real-estate sales contract states that the sale of the property was to close on or before May 31, 2019, which undisputedly did not occur. It is also undisputed that the parties did not extend the deadline for the closing date beyond May 31, 2019, and no language in the real-estate sales contract indicates that the closing could occur after that date. As argued by some of the appellees in their briefs, the January 25, 2019, real-estate sales contract expired on May 31, 2019. See Joseph v. MTS Inv. Corp., 964 So. 2d 642,

648-50 (Ala. 2006). Accordingly, even if the January 25, 2019, real-estate sales contract did convey to the purchasers some interest in the contested property (a proposition that the purchasers have not demonstrated), that alleged interest expired on May 31, 2019. The purchasers did not file their motion to intervene in the proceedings regarding the administration of Turner's estate until December 14, 2020, nearly 19 months after any potential interest in the contested property had already expired. The purchasers have failed to demonstrate that they have a sufficient interest to intervene in the proceedings regarding the administration of Turner's estate.

Second, considering the purchasers' argument that White and Amanda have asserted an interest in the contested property based on their petition to probate Turner's alleged will, as we have already determined, White and Amanda's petition to probate Turner's alleged will was a nullity because the probate court lacked jurisdiction to consider that petition. The basis of White and Amanda's claim to the contested property therefore does not currently exist. The event that the purchasers assert "triggered" their right to intervene has not legally

occurred. Taking the purchasers' argument as we find it, they cannot prevail.<sup>4</sup>

Accordingly, the purchasers have not established the two factual premises they say are necessary to their argument: (1) the purchasers have not established that they have an interest in the contested property based on the expired January 25, 2019, real-estate sales contract and (2) the purchasers have not established that White and Amanda have made a claim to the contested property, because White and Amanda's petition to probate Turner's alleged will was a nullity. Having failed to establish those facts, the purchasers cannot demonstrate that they have a sufficient interest to intervene in the proceedings regarding the administration of Turner's estate.

Further, the purchasers have also failed to demonstrate that their ability to protect their alleged interest may, as a practical matter, be impaired or impeded by not allowing them to intervene. As discussed

---

<sup>4</sup>We further note that the purchasers have not explained how White and Amanda's filing of their petition to probate Turner's alleged will, which did not occur until November 13, 2020, could have possibly interfered with the purchasers' closing on the sale of the property that was the subject of the January 25, 2019, real-estate sales contract, which included the contested property, which was supposed to occur more than a year earlier, on or before May 31, 2019.

earlier, the only interest that the purchasers could have in the contested property is based on the January 25, 2019, real-estate sales contract. The parties did not close on the sale by the contractual deadline of May 31, 2019. In an effort to protect their contractual rights, on July 29, 2019, after the real-estate sales contract had expired, the purchasers commenced a breach-of-contract action against Williamson, individually and in her capacity as personal representative of Turner's estate. The purchasers alleged that Williamson had breached the real-estate sales contract by failing to close on the sale on or before May 31, 2019. The purchasers have requested specific performance of the real-estate sales contract or compensatory damages. There appears to be no reason why the purchasers cannot fully litigate their contractual claims in that separate litigation, rather than by intervening in the proceedings regarding the administration of Turner's estate.

The purchasers have failed to demonstrate that the circuit court exceeded its discretion in denying their motion to intervene. The record supports the conclusion that the purchasers did not have a sufficient interest relating to the administration of Turner's estate and that their ability to protect their contractual rights was not impaired or impeded by

not allowing them to intervene. Accordingly, we affirm the circuit court's order denying the purchasers' motion to intervene.

Lastly, the purchasers argue that the circuit court erred in failing to hold a hearing on their motion to alter, amend, or vacate the circuit court's December 7, 2021, order denying their motion to intervene before that postjudgment motion was denied by operation of law pursuant to Rule 59.1, Ala. R. Civ. P. In Flagstar Enterprises, Inc. v. Foster, 779 So. 2d 1220, 1221 (Ala. 2000), this Court stated that,

"[i]n general, whether to grant or to deny a posttrial motion is within the sound discretion of the trial court, and the exercise of that discretion will not be disturbed on appeal unless by its ruling the court abused some legal right and the record plainly shows that the trial court erred. See Green Tree Acceptance, Inc. v. Standridge, 565 So. 2d 38 (Ala. 1990). However, if a party requests a hearing on its motions for a new trial, the court must grant the request. Rule 59(g), Ala. R. Civ. P. See Walls v. Bank of Prattville, 554 So. 2d 381, 382 (Ala. 1989) ('[W]here a hearing on a motion for [a] new trial is requested pursuant to Rule 59(g), the trial court errs in not granting such a hearing.'). Although it is error for the trial court not to grant such a hearing, this error is not necessarily reversible error. For example, if an appellate court determines that there was no probable merit to the motion, it may affirm based on the harmless-error rule. See Rule 45, Ala. R. App. P.; and Kitchens v. Maye, 623 So. 2d 1082, 1088 (Ala. 1993) ('failure to grant a hearing on a motion for new trial pursuant to Rule 59(g) is reversible error only if it "probably injuriously affected substantial rights of the parties"')."

SC-2022-0700; SC-2022-0701

We hold that the denial by operation of law of the purchasers' motion to alter, amend, or vacate the circuit court December 7, 2021, order without conducting a hearing was harmless error because there was no probability of merit in the purchasers' motion. The purchasers asserted essentially the same arguments in their motion to alter, amend, or vacate that they have asserted before this Court. We have thoroughly addressed the arguments concerning the purchasers' right to intervene and have determined that they lack merit.

#### Conclusion

Based on the foregoing, in appeal number SC-2022-0700, we affirm the circuit court's order denying the purchasers' motion to intervene, and, in appeal number SC-2022-0701, we dismiss the appeal for lack of jurisdiction.

SC-2022-0700 -- AFFIRMED.

SC-2022-0701 -- APPEAL DISMISSED.

Parker, C.J., and Shaw, Wise, Bryan, Mendheim, Stewart, and Mitchell, JJ., concur.

Sellers, J., concurs in the result.